

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Jimmy Duncan,

Plaintiff,

vs.

Cpl. Robert Cook, et al.

Defendants.

Civil Action No.: 8:09-1186-MBS-BHH

**REPORT AND RECOMMENDATION
OF MAGISTRATE JUDGE**

The plaintiff filed this prisoner civil rights action on May 7, 2009. Before the court is the Plaintiff's motion for a default judgment. (Dkt. #41.) The Plaintiff contends that Defendant Jay Lemacks has failed to respond, that default judgment should be entered, and that punitive damages in the amount of \$250,000 and "injunctorial relief as to end this excessive probationary sentence" be entered. However, a review of this case shows that a default judgment is not appropriate.

Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Local Rule 73.02(B)(2)(d), D.S.C., this magistrate judge is authorized to review all pretrial matters in cases filed under Title 42, United States Code, Section 1983, and submit findings and recommendations to the District Court.

Rule 55(a) of the Federal Rules of Civil Procedure provides that "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default." Fed.R.Civ.P. 55(a). However, Defendant Jay Lemacks is not in default. On July 2, 2009, the undersigned granted the defendant's motion for an extension of time in which to file his answer to the complaint. (Dkt. #26.)¹ As Defendant Lemacks did not file his answer by July 13, 2009, a Text Order was issued on

¹The defendant's motion for the extension was filed June 30, 2009. (Dkt. # 20.)

July 20, 2009 (Dkt. #28) giving the defendant until July 29, 2009, to file his answer. On July 23, 2009, Defendant Jay Lemacks filed his Answer.

Based on the foregoing, it is recommended that the Plaintiff's Motion (Dkt. # 41) be DENIED.

IT IS SO RECOMMENDED.

s/Bruce Howe Hendricks
United States Magistrate Judge

June 22, 2009
Greenville, South Carolina

The Plaintiff's attention is directed to the important notice on the next page.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Court Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005).

Specific written objections must be filed within ten (10) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three (3) days for filing by mail. Fed. R. Civ. P. 6(a) & (e). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
P.O. Box 10768
Greenville, South Carolina 29603

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985).